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In re Application of :  
Tatsuji Seki et al :  
Application No.: 09/857,651 : DECISION ON  
PCT No.: PCT/US99/06881 :  
Int. Filing Date: 08 December 1999 : PETITION  
Priority Date: 08 December 1998 :  
Attorney's Docket No.: 9150-0009.10 : UNDER 37 CFR 1.181  
For: A METHOD FOR MANUFACTURING :  
GLYCOPROTEINS HAVING HUMAN-TYPE :  
GLYCOSYLATION :

This decision is in response to the "Petition to Withdraw Holding of Abandonment Under 37 C.F.R. 1.181(a)" filed on 08 July 2002, requesting the withdrawal of the Notice of Abandonment mailed on 31 May 2002 because the response to the "Notification of Missing Requirements" was timely.

### **BACKGROUND**

On 07 June 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). Applicants, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed Declaration or Oath was provided with the transmittal letter.

On 28 June 2001, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date" must be submitted within one month from its 28 June 2001 date of mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application. In addition, the surcharge for providing the oath or declaration later than the appropriate 20 or 30 months from the priority date (37 CFR 1.492(e)).

On 31 May 2002, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" which indicated that applicant had failed to reply to the

"NOTIFICATION OF MISSING PARTS" mailed on 28 June 2001; accordingly, the application was abandoned.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 31 May 2002, petitioner has submitted the instant petition requesting withdrawal of the Notice of Abandonment. In support of the request, petitioner has provided a copy of the returned/stamped receipt card acknowledging a receipt date of 27 August 2001, within the time period of response.

On 08 July 2002, applicant filed the present petition, which included a copy of the returned postcard. However, no copies of a preliminary amendment, and an executed combined declaration and power of attorney were submitted at such time.

On 04 October 2002, applicant faxed to this Office a true copy of the response mailed August 24, 200, which included, *inter alia*, a preliminary amendment, and an executed combined declaration and power of attorney.

### DISCUSSION

The present petition was accompanied by a copy of the original postcard which was sent to the United States Designated/Elected Office (DO/EO/US). The postcard lists the items submitted on 27 August 2001 and it indicates, *inter alia*, an executed declaration and power of attorney was submitted on such date. Applicant states that the papers faxed on 04 October 2002 to accompany the present petition are true copies of the papers that were mailed on 24 August 2001 and referred to in the postcard receipt.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard receipt serves as *prima facie* evidence of receipt of the listed items on 27 August 2001 by the USPTO.

In view of the above, the applicant's response is considered timely. Accordingly, the instant application has been improperly abandoned.

### CONCLUSION

Applicants' request to withdraw the "NOTIFICATION OF ABANDONMENT" is GRANTED.

The NOTIFICATION OF ABANDONMENT, mailed 31 May 2002 has been  
**VACATED.**

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for issuance of a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying a 35 U.S.C. § 371 date of **27 August 2001.**



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